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# State v. Chadwick Respondent's Brief Dckt. 43829

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 43829
Plaintiff-Respondent,	)	
	)	Bonneville County Case No.
v.	)	CR-2015-5356
	)	
DARIN CHADWICK,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Chadwick failed to establish that the district court abused its discretion by imposing a unified sentence of 10 years, with one year fixed, upon his guilty plea to felony indecent exposure?

Chadwick Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Chadwick pled guilty to felony indecent exposure and the district court imposed a unified sentence of 10 years, with one year fixed. (R., pp.75-77.) Chadwick filed a Rule 35 motion seven days later. (R., pp.6, 75-77, 81-82.) The Rule 35 motion was denied,

and Chadwick subsequently filed a notice of appeal timely from judgment of conviction. (R., pp.86-87, 90-93.)

Chadwick asserts his sentence is excessive in light of his mental health, family support, drug use, and purported remorse. (Appellant's brief, pp.4-6.) The record supports the sentence imposed.

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden the appellant must show that the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id.

The maximum prison sentence for felony indecent exposure is 10 years. I.C. § 18-4116. The district court imposed a unified sentence of 10 years, with one year fixed, which falls within the statutory guidelines. (R., pp.75-77.) At sentencing, the district court addressed the seriousness of the offense, the danger Chadwick presents to the community, Chadwick's "mental health challenges," and Chadwick's own admission that

his offense was not driven by the voices in his head. (Tr., p.47, L.3 – p.50, L.15.) The state submits that Chadwick has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

### Conclusion

The state respectfully requests this Court to affirm Chadwick's conviction and sentence.

DATED this 21st day of June, 2016.

/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General

ALICIA HYMAS  
Paralegal

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 21st day of June, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

ELIZABETH ANN ALLRED  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General

## APPENDIX A

Thank you.

THE COURT: Thank you.

Does the State have any rebuttal argument?

MR. WINCHESTER: Just like to point out, your Honor, the -- the things that he has in place right now with the ACT team, with the family members, and all these other things, those will be there when he gets back from retained jurisdiction.

These are not like job opportunities that come and go on a daily and weekly basis. These are his long-term connections, or they're programs that will remain in place and be available for him.

And with the rider aftercare and the supervision that comes with that, they'll ensure that he gets placed back where he needs to be.

Once again, your Honor, this is an individual that's got a -- he has some very serious mental health issues that I don't think are being properly addressed here. He was under supervision. He managed to slip through the cracks once.

As he said before, as he just said now, he's very easily swayed and influenced by people and things. So while he's here in the community, unless we can get him somewhere where we can get a better look at him, better evaluation, and see if we can't try and nail some of these

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things down, he's just going to be subject to these same problems over and over again.

As Dr. Hatzenbuehler said, he is at a risk of reoffense of this type of behavior. This type of behavior is not something that requires a lot of previous planning. This was in broad daylight.

And I think the risk of reoffense is high enough that it would justify something like a retained jurisdiction to get a better look at it first.

Thank you.

THE COURT: Thank you.

Mr. Chadwick, would you like to make any statement?

MR. PENDLETON: I apologize. I apologize, and I'm not going to reoffend. And I'm doing good now. If I go to prison, then it will just -- I don't know. It just -- it won't do me no good. Being out here in society is more helpful to me than anything else.

THE COURT: Okay. Thank you for that statement.

Are you fully satisfied with the representation of your counsel?

THE WITNESS: Yes, I am, your Honor.

THE COURT: All right.

Counsel, is there any legal reason why the

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Court should not proceed today?

MR. GRANT: No, sir.

THE COURT: Thank you.

Well, this case has conflicting interests and views, as represented by the attorneys. Making their recommendation from the State, I'm being asked to retain jurisdiction. And from -- from the Defense, the argument is for continued placement and supervision in the community.

Mr. Chadwick, let me share with you what are the considerations that this Court has to make. There are four. And they include protection of society, punishment for the wrongdoing, deterrence to you and to others, and to focus on your rehabilitation.

And what this Court must do is to try to satisfy those objectives while, at the same time, considering the suggestions by each -- each of the attorneys. And I'll do my best to comment on those and try to resolve some in the Court's mind and perhaps yours.

I want to appreciate the testimony or at least acknowledge the testimony that was provided by Mr. Anderson. I know the ACT team does wonderful work in the community.

I'm grateful that they have been working with you in the past. And I find the work that they do very credible and beneficial to the community. And so I've acknowledged his testimony today.

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And to -- although your sister did not testify, she's here supporting you, and I appreciate that. That's important that that support exists now and in the future, and it's a blessing in your life that that is available.

There are a couple of objectives in this case that really stand out in the Court's mind. And I guess I'll just begin with your -- your most recent statement that you provided the Court, and that is that prison won't do you any -- any good.

I know that there has been some challenges associated with your everyday living in the community, which includes the pretrial services relapse that took place.

The State makes the point that you're easily influenced. I recognize that there are significant mental health challenges. Those are before the Court, and I'm doing my best to be sensitive to those. They're described on page 13 of the presentence report.

One of the things that stands out in -- in this, however, as it relates to your mental health challenges is, very specifically, you tell the evaluator that the voices that you hear do not relate to the offense in this case.

You tell the evaluator that it wasn't as a result of the voices. You just simply did this offense. And what troubles the Court is that I believe that there is an ongoing threat that exists.

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If you evaluate the protection of society, this is no small thing, I think, to expose yourself to citizens that are enjoying everyday living on the greenbelt. And it -- I believe that it threatens the protection and safety of the community.

The question is, will those individuals come back to the greenbelt? Will they be able to enjoy those things? And so I think that applies to protection of society.

I think the offense has a significant consideration as it relates to deterrence to you and to others. One of the things that the Court is concerned is that, if I were to place you in the community today, does that continue an undue risk that isn't satisfied in probation?

Would probation depreciate the seriousness of the offense? And would it satisfy those needs of deterrence to you and to others?

I typically would highlight the fact of a prior criminal history. I think it's important to reference in this case because it exists, having a number of other offenses that are before the Court to weigh and consider.

In your history, if there's anything to mitigate against that, it's the fact that you struggle with mental health, likely for most of your adult life, which appears to be the case.

But I still have that obligation in my mind to

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protect the community. And in this case, I'm not satisfied that probation is appropriate.

I recognize Mr. Grant's argument that things have gone well recently, but I question that with use.

I accept the fact that, after the Court imposes sentence, that we will have to go through a process of picking up where we left off and being placed back into the community, but as I look at the offense, the history, and how you have done over the course of the last little while, I believe that incarceration is appropriate.

So with those considerations, the Court will impose the following sentence: The Court will impose a one-year fixed followed by a nine-year indeterminate for a unified sentence of ten years. The Court will give you credit for that time that has been served.

I'll be sensitive to the other components of the sentence by imposing a \$500 fine. Court costs are associated with this case. And I'll waive the public defender fees associated with your defense.

Is there any -- I don't imagine that there's any restitution on this matter. Is that accurate from the State?

MR. WINCHESTER: I think we just asked for the psychosexual part.

THE COURT: Mr. Grant, any view on that?

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MR. GRANT: This may get me in trouble, but apparently the Court didn't give it any stock, so why charge him for it?

THE COURT: Any other comments with regard to the psychosexual?

MR. GRANT: No, your Honor.

THE COURT: Well, I relied upon the report as I made reference to it. It's here before me.

You'll be required to reimburse that cost. And that will be the order of the Court.

Anything else?

Mr. Chadwick, let me share with you three dates to consider. The first is the right to appeal, 42 days from today's date. Next is the right to file a Rule 35 if you believe the Court has been unduly harsh or sentenced you illegally. That expires at 120 days.

And then, lastly, uniform postconviction relief expires one year from the date the appeal expires. I would invite you to visit with Mr. Grant about those details.

Do you have any questions for me or your counsel?

MR. GRANT: He's taking you into custody.

THE COURT: All right. Thank you. You may be excused.

MS. VAZQUEL: Your Honor?

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THE COURT: Ma'am, I -- I'm not going to be able to visit with you.

MS. VAZQUEL: No. I just --

THE COURT: If you have comments, you can share them with your attorney, or the State's attorney remains here.

MS. VAZQUEL: Well, he's just been doing so good. And you guys are going to send him away and make him all screwed up again.

THE MARSHAL: You need to leave ma'am and keep your comments to yourself.

(Proceedings concluded.)

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